



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Homestead Oil Corporation
FOR
E and R Oil
Facility ID No. 1-018654**

**Incident Report (IR) No. 194919; Pollution Complaint (PC) No. 2019-1023
AT
624 N. Independence Avenue, Independence, Virginia**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Homestead Oil Corporation, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations at E and R Oil, located at 624 N. Independence Avenue, Independence, Virginia.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Facility" means Homestead Oil Corporation's E and R Oil facility located at 624 N. Independence Avenue, Independence, Virginia.
8. "Homestead" or "Homestead Oil" means Homestead Oil Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Homestead Oil Corporation is a "person" within the meaning of Va. Code § 62.1-44.3. E and R Oil is the name used by Homestead Oil Corporation for its oil distributorship facility located in Independence, Virginia.
9. "Location" means the location of the E and R Oil Facility where the oil discharges occurred, at 624 N. Independence Avenue, Independence, Virginia.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "ODCP" means oil discharge contingency plan.
12. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
13. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

16. “Regulations” means the Facility and Aboveground Storage Tank (AST) Regulation, 9 VAC 25-91-10, *et seq.* These Facility and AST Regulations incorporate the federal Oil Pollution Prevention Regulations (40 CFR 112) by reference.
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters. (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses aboveground storage tanks.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. “TMDL” means total maximum daily load.
21. “Va. Code” means the Code of Virginia (1950), as amended.
22. “VAC” means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. E&R Oil is registered with the Department as being owned by Homestead Oil Corporation, and as having five aboveground storage tanks (ASTs) used for the purpose of storing and distributing petroleum products. The Facility has a combined storage capacity of 54,000 gallons of petroleum products and is thus subject to the Oil Discharge Contingency Plan (ODCP) and Pollution Prevention requirements contained in the Facility and Aboveground Storage Tank (AST) Regulation.
2. Little Peach Bottom Creek is located in the New River Basin, Section 2, Class IV, Special Standard v (for maximum temperature). Little Peach Bottom Creek has not been assessed. No TMDL has been developed.
3. On February 16, 2019, DEQ staff received notification from the Virginia Department of Emergency Management (VDEM) of a visible oil sheen on Little Peach Bottom Creek adjacent to E&R Oil, in Independence, Virginia. DEQ staff investigation revealed that approximately 700 gallons of No. 2 home heating oil was discharged when a pump that was being used to fill a heating oil delivery truck malfunctioned. The product discharged into the AST’s secondary containment. The valve used to drain water from the containment had been inadvertently left open, resulting in an escape of product into a small earthen holding pond that drained to the nearby creek, resulting in a surface oil sheen on Little Peach Bottom Creek for more than half a mile downstream. An initial response to the discharge by the local fire department was taken over by an environmental contractor contacted by Homestead Oil. The environmental contractor was on site within approximately 3.5 hours. An estimated 300 gallons of liquid were

removed from the containment area and approximately 400 gallons were removed from the holding pond. An additional 50 gallons of liquids were removed at the point of entry to the creek. Absorbent booms and pads were placed and maintained in the earthen holding pond and on the creek. This release was assigned IR No. 194919. It was also assigned PC No. 2019-1023.

Va. Code § 62.1-44.34:18.A of Article 11 of the State Water Control Law states “The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited”.

4. On February 19, 2019, as a result of the discharge of oil to state waters, DEQ staff conducted an AST Formal Compliance Inspection at E&R Oil. Staff found several housekeeping issues adjacent to the stream/at the facility, including significant oil staining at the following locations: (1) adjacent to and under the diesel dispenser in front of the office; (2) beneath the small AST on the side of the building; and (3) beneath the loading rack for the regulated ASTs.

Regulation 9 VAC 25-91-130.B.5 states “Visual daily inspection and weekly inspections. The operator or a duly authorized representative shall conduct a daily visual inspection for each day in which normal operation occurs, but no less frequently than once every 14 days in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following: (1) A complete walk-through of the facility property in the areas where this chapter applies to ensure that no hazardous conditions exist; (2) An inspection of ground surface for signs of leakage, spillage, or stained or discolored soils; and (3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured;...”

5. On February 19, 2019, as a result of the discharge of oil to state waters, DEQ staff conducted an AST Formal Compliance Inspection at E&R Oil. Correspondence submitted by Homestead Oil has demonstrated a return to compliance for the following inspection items:
 - a. Documentation received by DEQ on June 7, 2019 included an amended Form 7540 [Registration for Facility and Aboveground Storage Tank (AST) Form] for the AST systems at the Facility;
 - b. Documentation dated August 22, 2019 and received by DEQ on September 3, 2019 demonstrated that the installed line leak detectors were tested and that annual line tightness tests for the underground lines had been conducted; and
 - c. Documentation dated August 23, 2019 and received by DEQ on September 3, 2019 demonstrated that all tank gauges had been calibrated.
6. On February 19, 2019, DEQ staff conducted a formal compliance inspection of the AST facility and made the following observations, which remained outstanding and were cited in a NOV:

- a) no documentation was available to verify that a training program had been developed for personnel conducting the daily and weekly inspections;
- b) documentation verifying that the required training had been conducted for authorized Facility personnel conducting the daily and weekly inspections was not provided;
- c) no documentation was available to verify that daily inspections were being performed;
- d) no documentation was available to verify that weekly inspections were being performed;
- e) visual monitoring is being used as the method of leak detection for the tanks and associated aboveground piping. At the time of the inspection, weekly visual monitoring results for the tanks and piping were not being properly documented;
- f) proper inventory control procedures verifying that proper inventory control is being performed on the tanks with underground piping connections (tanks A, B, C);
- g) The oil discharge contingency plan (ODCP) for the facility had been most recently approved on April 17, 2014. The facility Oil Discharge Contingency Plan (ODCP) expired on July 11, 2019; and
- h) no documentation was available to verify that the facility had developed safe fill, transfer, or shutdown procedures.

Regulation 9 VAC 25-91-130.B.6.a states “Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility”.

Regulation 9 VAC 25-91-130.B.6.d states “The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall document this training in the facility records”.

Regulation 9 VAC 25-91-130.B.5.b states “The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in subdivision 5 c of this subsection. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be maintained at the facility and provided to the board upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.”

Regulation 9 VAC 25-91-130.B.7 states “The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater (i.e., a method of leak detection) as required by 9 VAC 25-91-170.A.18 and contained in the facility's approved ODCP. These activities shall be inspected and approved by the board.”

Regulation 9 VAC 25-91-130.B.1 states “b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. Reconciliations of inventory measurements shall be conducted monthly. If a significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation and reconcile physical measurements to 60°F at 14.7 pounds per square inch absolute. This investigation shall be completed within five working days of the end of the second reconciliation period. If this

investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause of the inventory variation. The testing method, schedule, and results of this additional testing shall be submitted to the board for review. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output of oil. c. Inventory records shall be kept of incoming and outgoing volumes of oil from each tank. All tanks shall be gauged no less frequently than once every 14 days and on each day of normal operation. For a refinery, the operator shall calculate the input and output of oil at the refinery on a daily basis. The operator shall reconcile daily inventory records with the inventory measurements conducted monthly.”

Regulation 9 VAC 25-91-170.F states “Updated plans or certification for renewal of an existing plan shall be submitted to the board for review and approval not less than 90 days prior to expiration of approval of the current plan. Submittal of the certification for renewal for an existing plan shall be made in accordance with the provisions of subsection B of this section.”

9VAC 25-91-130.B.3.a states “Each operator shall institute safe fill, shutdown, and transfer procedures, or equivalent measures approved by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur. Written safe fill, shutdown, and transfer procedures shall be maintained by the operator for use by facility personnel.”

7. On March 23, 2019, with no evidence of a sheen observed on surface waters, all absorbent materials were removed from the site.
8. On August 29, 2019, DEQ Land Protection Remediation staff closed PC No. 2019-1023, after receipt of results from three soil samples taken from the holding pond indicated low levels of total petroleum hydrocarbons (TPH), which do not warrant further corrective action.
9. On October 16, 2019, the Department issued Notice of Violation No. NOV-012-1019-WA to Homestead Oil for a discharge of oil to state waters and land, and for violations of AST program requirements, as noted above. Although stated in the written NOV response as noted in the paragraphs above, no documentation has been provided to satisfy the AST program requirements cited.
10. On November 8, 2019, Department staff met with representatives of Homestead Oil to discuss the discharge, emergency response, reporting, containment, clean-up and future actions, as well as AST program requirements. Per letter dated June 3, 2019 and provided to DEQ by Homestead Oil at the November 8, 2019 meeting, the environmental consultant provided an account of all activities undertaken and observations made by his firm regarding the discharge. During this meeting, Homestead Oil provided fuel inventory records from February 14, 15, 16 and 18, 2019, and put forth its position that during the confusion of the release investigation, a mistake had been made in estimation of the amount of fuel lost, that much less than the amount estimated was actually lost.

Homestead Oil also provided pictures documenting cleanup of the oil stained areas at the three locations noted during the February 19, 2019 AST Formal Compliance Inspection.

11. At the November 8, 2019 meeting, Homestead Oil provided updated P.E. certification documentation of the secondary containment structure.
12. On November 25, 2019, Homestead Oil submitted a written response to the NOV which stated the following:
 - a) establishment of a training program in February, 2019;
 - b) documentation of training of Facility personnel on March 4, 2019;
 - c) daily inspections had been performed since late October, 2018, with signing of daily inspections having been instituted as of April 16, 2019;
 - d) signing of weekly inspections began as of April 16, 2019;
 - e) documentation of visual leak detection inspections on April 2, 2019;
 - f) documentation of proper inventory control on March 1, 2019; and
 - g) documentation of safe fill, transfer, or shutdown procedures, but with no date given.
13. In the November 25, 2019 written response to the NOV, Homestead Oil again put forth its position that during the confusion of the release investigation, a mistake had been made in estimation of the amount of fuel lost, that based on a measurement of inches rather than feet, much less than the amount estimated was actually lost. Homestead Oil also submitted a letter from its environmental consultant/contractor, dated November 19, 2019, which estimated that less than 100 gallons of fuel was released from the tank into the secondary containment. Homestead Oil stated in their submittal that, due to daily measurement calculations, No. 2 dyed fuel sales, and their “strong conviction” that no syphoning action occurred, they believe that no more than 33.75 gallons of fuel was lost.
14. On November 26, 2019, Homestead Oil Corporation submitted a revised ODCP for E&R Oil. This revised ODCP lacked an Article 11 P.E. certification for containment value, which was received by DEQ by e-mail on May 18, 2020.
15. On June 26, 2020, Homestead Oil submitted an additional response (dated June 19, 2020), reiterating that no siphoning action occurred, stating that the discharge was limited to the fuel in the pipe from the tank to the pump at the loading rack and their firm belief that approximately 33.75 gallons of product was actually lost. Homestead Oil resubmitted fuel inventory sheets for the dates in question, the consultant/contractor’s letter dated November 19, 2020 estimating that less than 100 gallons of oil had been released, and pictures of valve repairs made.
16. Based on the results of the February 16, 2019 discharge response investigation, the February 19, 2019 AST Formal Compliance Inspection, the November 8, 2019 meeting, and documentation submitted on November 8, 2019, November 25, 2019, November 26, 2019 and June 26, 2020, the State Water Control Board concludes that Homestead Oil has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, and Regulation 9 VAC 25-91-130.B.5 as described in paragraphs C.3 and C.4, above. Homestead Oil has also violated the AST Regulation, 9 VAC 25-91-10, *et seq.* as described in paragraph C.6, above.

17. In order for Homestead Oil to complete its return to compliance, DEQ staff and representatives of Homestead Oil have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Homestead Oil Corporation, and Homestead Oil Corporation agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,540.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Payment 1	\$2,847.00	Due October 31, 2020
Payment 2	\$2,847.00	Due December 31, 2020
Payment 3	\$2,846.00	Due February 28, 2021

Payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Homestead Oil Corporation shall include its Federal Employer Identification Number (FEIN) with each civil charge payment and shall indicate that each payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Homestead Oil Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Homestead Oil for good cause shown by Homestead Oil, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-012-1019-WA dated October 16, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Homestead Oil admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Homestead Oil consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Homestead Oil declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Homestead Oil to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Homestead Oil shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Homestead Oil shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Homestead Oil shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

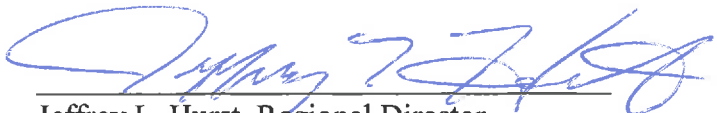
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Homestead Oil. Nevertheless, Homestead Oil agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Homestead Oil has completed all of the requirements of the Order;
 - b. Homestead Oil petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Homestead Oil.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Homestead Oil from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Homestead Oil and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Homestead Oil certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Homestead Oil to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Homestead Oil.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Homestead Oil voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 01st day of October, 2020.


Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Homestead Oil Corporation voluntarily agrees to the issuance of this Order.

Date: 8/10/2020 By: Brian D. Alexander, Co-Owner
Homestead Oil Corporation

Commonwealth of Virginia

City/County of Virgi Wythe Co

The foregoing document was signed and acknowledged before me this 10th day of

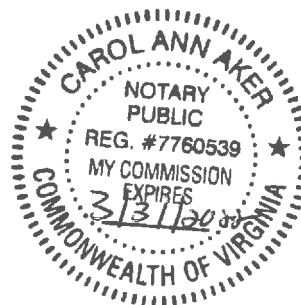
Aug., 2020, by Brian Alexander who is
President of Homestead Oil Corporation, on behalf of the corporation.

Carol Ann Aker
Notary Public

7760539
Registration No.

My commission expires: 3/31/2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulations, Homestead Oil Corporation agrees to implement the following actions by the dates noted below:

- 1) No later than October 1, 2020:
 - a) Develop and submit to DEQ for approval a training program for authorized Facility personnel that conduct the daily and weekly inspections that meets the requirements of Regulation 9 VAC 25-91-130.B.6;
 - b) Submit documentation verifying that daily inspections are being performed, in accordance with Regulation 9 VAC 25-91-130.B.5(a);
 - c) Submit documentation verifying that weekly inspections are being performed, in accordance with Regulation 9 VAC 25-91-130.B.5(b);
 - d) Submit documentation verifying that weekly visual monitoring results for the tanks and piping are being properly documented, in accordance with Regulation 9 VAC 25-91-130.B.7;
 - e) Submit documentation verifying that proper inventory control procedures are in place and that proper inventory control is being performed on the tanks with underground piping connections (tanks A, B and C), in accordance with Regulation 9 VAC 25-91-130.B.1; and
 - f) Submit documentation verifying that safe fill, transfer, or shutdown procedures have been developed for the Facility, in accordance with Regulation 9 VAC 25-91-130.B.3.
- 2) No later than December 1, 2020, conduct the approved training for authorized Facility personnel conducting the daily and weekly inspections and submit documentation that the training has been administered to those individuals, as required by Regulation 9 VAC 25-91-130.B.6.d.
- 3) All documentation submitted to DEQ's SWRO shall be mailed to the attention of:

Ruby Scott
Compliance Auditor
Department of Environmental Quality
Southwest Regional Office
355-A Deadmore Street
Abingdon, VA 24210